nized when the statute is not penal, *Raisor* v. *Chicago etc. Ry.* (1905) 215 Ill. 47, and is similar to that of the forum. *Stewart* v. *B. & O. R. R.* (1897) 168 U. S. 445; 4 COLUMBIA LAW REVIEW 503. It is generally, however, considered impolitic to allow a foreign representative to sue, *Maysville etc. Co.* v. *Wilson's Adm.* (1893) 16 U. S. App. 236; *S. W. R. R.* v. *Pulk* (1858) 24 Ga. 356; *Denny* v. *Faulkner* (1879) 22 Kan. 90; see 1 Woerner, Am. Law of Admin., § 162. In applying this rule of policy, two theories of the administrator's status are advanced. Under one, the representative is considered as acting *virtute officii,* though not for the general estate; he must therefore obtain letters of administration in the forum, *Richards* v. *Iron Works, supra; S. C. R. R. Co.* v. *Nix, Adm.* (1882) 68 Ga. 572, which will be granted as matter of course, *Hartford etc. R. R.* v. *Andrews* (1869) 36 Conn. 213, or on grounds of assets or domicile. See *supra.* Under the other the statute is considered as imposing a trust upon him who shall be personal representative; as trustee he may therefore maintain the action *de jure. Boulden* v. *Pennsylvania R. R. Co., supra; Jeffersonville etc. R. R.* v. *Swayne's Adm., supra.*

The Supreme Court of Rhode Island has recently adhered to this latter theory in *Connor* v. *New York etc. Ry. Co.* (1908) 68 Atl. 482, holding unanimously that a domiciliary administrator of the *locus delicti,* Connecticut, could sue as trustee in Rhode Island. Neither theory contravenes the rule regarding extraterritorial power of a representative, and both make possible substantially the same conflicts. These, however, are unimportant since a release by one representative is binding upon all in the absence of fraud. *Pisana* v. *Shanley Co.* (1901) 66 N. J. L. 1; *Nelson* v. *Chesapeake etc. R. R. Co., supra,* 978. Moreover the rights of citizens, cf. 6 COLUMBIA LAW REVIEW 521; and see *Putnam* v. *Pitney* (1891) 45 Minn. 242, could be about as well protected by the extensive power of the court over the administrator as trustee as by the requirement of ancillary administration in the forum. Accordingly the greater convenience insured by the absence of this requirement as well as the greater logic in regarding the representative as trustee, since he does not act on behalf of the estate, warrants the rule of the principal case.

FRAUD IN CORPORATE MANAGEMENT AND THE RIGHTS OF A MINORITY STOCKHOLDER.—The doctrine frequently asserted, that equity protects the minority stockholder, may be stated to comprehend a right to an accounting or an injunction with respect to transactions *ultra vires* or amounting to a breach of trust. The plaintiff must be a bona fide stockholder; *Robson* v. *Dobbs* (1869) L. R. 8 Eq. 301; *Belmont* v. *Erie R. R. Co.* (1869) 52 Barb. 637; he must generally show special injury where the transaction is not *ultra vires; Hill* v. *Nisbet* (1884) 100 Ind. 341; *Hedges* v. *Paquett* (1869) 3 Ore. 77; and, the corporation being a trustee for the stockholders, in most cases he must allege and prove that the corporation is unwilling or unable to bring suit. *Hawes* v. *Oakland* (1881) 104 U. S. 450; *Greaves* v. *Gouge* (1877) 69 N. Y. 154; *Dunphy* v. *T. N. Assn.* (1888) 146 Mass. 495. But when the transaction is *ultra vires, Stebbins* v. *Perry County* (1897) 167 Ill. 567, *Botts* v. *Simpsonville etc. Turnp. Co.* (1888) 88 Ky. 54, or the corporation is under the control of the guilty parties, *Brewer* v. *Boston Theatre* (1870) 104 Mass. 378; *Wickersham* v. *Crittenden* (1892)

93 Cal. 17; *Rogers* v. *Ry. Co.* (1898) 91 Fed. 299, such proof is unnecessary. Whether or not an allegation that the directors have been requested to sue and have refused is sufficient, seems to be unsettled, some courts holding that the plaintiff need not apply to a stockholders' meeting, *Gregory* v. *Patchett* (1864) 33 Beav. 595; *Cook, Corp.* § 720, and others, that this is necessary, *Foss* v. *Harbottle* (1843) 2 Hare. 461; *Bill* v. *Western Union T. Co.* (1883) 16 Fed. 14, except in the possible case of a fraud which could not be authorized by a majority of the stockholders. *Mason* v. *Harris* (1879) L. R. 11 Ch. Div. 97. Although there be such an authorization, the plaintiff's right is not impaired, for a majority of the stockholders sustain much the same relation towards the minority as the directors sustain towards all the stockholders. *Farmers etc. Co.* v. *New York Ry. Co.* (1896) 150 N. Y. 410; *Erwin* v. *Oregon etc. Co.* (1886) 27 Fed. 625. The right of action is not limited to cases of technical fraud, but attaches to every breach of trust, including, it has been held, gross negligence. *Ives* v. *Smith* (1888) 3 N. Y. Supp. 645.

Fraud exists where the interests of the corporation are deliberately neglected in favor of a personal or other interest. An oppressive scheme of management "so far opposed to the true interests of the corporation itself as to lead to the clear inference that no one thus acting could have been influenced by any honest desire to secure such interests" may be enjoined; *Gamble* v. *Queens etc. Co.* (1890) 123 N. Y. 91; see also *Hannerty* v. *Standard Theatre Co.* (1891) 109 Mo. 297; but poor management alone, although resulting in loss to the corporation, furnishes no ground for the interference of equity. *McMullen* v. *Ritchie* (1894) 64 Fed. 253; *Ellerman* v. *Chicago etc. Co.* (1891) 49 N. J. Eq. 217; *Leslie* v. *Lorillard* (1888) 110 N. Y. 519. The fraud being a deliberate service of an outside interest, the proof must show a distinct favoring of that interest. Primarily the question of the adequacy of the consideration is examined, and where it appears that an undue advantage has been taken by the corporate managers, the contracts are avoided or the performance enjoined, *Woodroof* v. *Howes* (1891) 88 Cal. 184; *Sage* v. *Culver* (1895) 147 N. Y. 241, but a substantial discrepancy between the consideration and the market value of the *res* is not conclusive. *Gamble* v. *Queens etc. Co., supra.* Material evidence may be gleaned from a conflict or intermingling of the interests involved in the transaction: as in cases of contracts between the directors, officers, or majority stockholders and the corporation, *Rogers* v. *Lafayette etc. Works* (1875) 52 Ind. 296; *Munson* v. *Syracuse etc. R. R. Co.* (1886) 103 N. Y. 58, or between two or more corporations having common directors or officers, *Ryan* v. *Leavenworth etc. Ry. Co.* (1879) 21 Kan. 365; *Fitzgerald* v. *Fitzgerald etc. Co.* (1895) 44 Neb. 463; *Pearson* v. *Concord R. R. Corp.* (1883) 62 N. H. 537, or common majority stockholders. *Meeker* v. *Winthrop Iron Co.* (1883) 17 Fed. 48; *Peabody* v. *Flint* (Mass. 1863) 6 Allen. 52; *Farmers' etc. Co.* v. *New York etc. Ry. Co., supra; Goodin* v. *C. & W. Canal Co.* (1868) 18 Oh. St. 169. Lord Hardwicke said in *Whelpdale* v. *Cookson* (1747) 1 Ves., Sr. 9, "It is not enough for the trustee to say 'You cannot prove any fraud' as it is in his power to conceal it," and upon analogy to cases of strict trust to which this reasoning is applicable and in which the transaction is effected by a single and the only trustee, many decisions have

declared these contracts void without proof of fraud in fact, citing almost invariably cases involving the interest of the technical trustee rather than that of the corporate director, *Pearson* v. *Concord R. R. Corp., supra; Munson* v. *Syracuse etc. R. R. Co., supra; Wardell* v. *R. R. Co.* (1880) 103 U. S. 651, and others have held likewise, provided the officer interested was needed to make a quorum in the board, *Butts* v. *Wood* (1867) 37 N. Y. 317, or his vote was necessary to a majority. *Bennett* v. *St. Louis & etc. Co.* (1895) 19 Mo. App. 349. These decisions, however, are overborne by the weight of authority, requiring proof of actual fraud. *Burden* v. *Burden* (1899) 159 N. Y. 287; *Shaw* v. *Davis* (1894) 78 Md. 308; *Leavenworth County Com'r's* v. *Chicago etc. Ry. Co.* (1885) 25 Fed. 219; Aff'd. 134 U. S. 688. The nature of the question is such that each case must be decided very largely upon its facts, and the tendency seems to be to resolve the whole problem into the plain question of "fairness" to the plaintiff. *Continental Ins. Co.* v. *New York etc. R. R. Co.* (1907) 187 N. Y. 225; *Colgate* v. *U. S. Leather Co.* (N. J. 1907) 67 Atl. 657.

Thus in a recent case in which a minority stockholder sued to enjoin a merger of two trust companies, it appeared that the companies had directors and officers in common and that forty-nine per cent. of the stock of the plaintiff's company was owned by a majority stockholder of the other company. The merger agreement seemed on its face grossly unfair to the plaintiff; but there was no proof of actual fraud and the court balanced the apparent inequality by taking into consideration the greater earning capacity, present and prospective, of the other company. *Colby* v. *Equitable Trust Co.* (1908) 38 N. Y. Law Jour. No. 119. The intermingling of the corporate interests being insufficient without other evidence of fraud, the decision turned upon the question of consideration; and this the court found to be adequate.